

MEMORANDUM FOR: F - William T. Hogarth, Ph.D.

FROM: F/SF - John H. Dunnigan

SUBJECT: Transmittal of the Environmental Assessment to increase the incidental catch of weakfish in the Exclusive Economic Zone (EEZ) in non-directed fisheries using smaller mesh sizes--
DECISION MEMORANDUM

Attached for your signature and forwarding is an Environmental Assessment to increase the incidental catch of weakfish in the Exclusive Economic Zone (EEZ) in non-directed fisheries using smaller mesh sizes from 150 lb to 300 lbs during any one day or trip, whichever is longer in duration.

Attachments

MEMORANDUM FOR: Joyce Wood
Director, NOAA Office of Strategic Planning

FROM: William T. Hogarth, Ph.D.

SUBJECT: Transmittal of the Environmental Assessment to increase the
incidental catch of weakfish in the Exclusive Economic Zone
(EEZ) in non-directed fisheries using smaller mesh sizes--
DECISION MEMORANDUM

Based on the subject environmental assessment, I have determined that no significant environmental impacts will result from the proposed action. I request your concurrence in this determination by signing below. Please return this memorandum for our files.

1. I concur. _____ .
Date

2. I do not concur. _____ .
Date

Attachments

To All Interested Governmental Agencies and Public Groups:

Pursuant to the National Environmental Policy Act, an environmental review has been performed on the following action:

TITLE: Environmental Assessment and Regulatory Impact Review/Final Regulatory Flexibility Analysis for Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) Regulations on Atlantic Coast Weakfish in the Exclusive Economic Zone (EEZ)

LOCATION: The EEZ off the New England, Mid-Atlantic and South Atlantic coasts.

SUMMARY: This action, issued under the Atlantic Coastal Act, will: (1) Allow non-directed fisheries using smaller mesh sizes to possess no more than 300 pounds of weakfish during any one day or trip, whichever is longer in duration (an increase of 150 pounds), and (2) Remove the State of Connecticut from the list of states where weakfish caught in the EEZ for commercial purposes can be landed (this is an administrative change only). The management measures are designed to be compatible with Amendment 4 to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan For Weakfish. Other alternatives considered included: (1) Take no Federal action; and (2) Allow no bycatch.

RESPONSIBLE OFFICIAL Anne Lange
Fishery Management Specialist
National Marine Fisheries Service
Office of Sustainable Fisheries
State-Federal Fisheries Division (SF8)
1315 East-West Highway, Suite 13248
Silver Spring, Maryland 20910
Phone: (301) 713-2334

The environmental review process led us to conclude that this action will not have a significant impact on the environment. Therefore, an environmental impact statement was not prepared. A copy of the finding of no significant impact, including the environmental assessment, is enclosed for your information. Please submit any written comments to the responsible official named above. Also, please send one copy of your comment to the NOAA Office of Policy and Strategic Planning, Room 15603, 1315 East-West Highway, Silver Spring, Maryland 20910.

Sincerely,

Joyce Wood
NEPA Coordinator

ENVIRONMENTAL ASSESSMENT AND REGULATORY IMPACT
REVIEW/FINAL REGULATORY FLEXIBILITY ANALYSIS
FOR ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT ACT
REGULATIONS FOR THE ATLANTIC COAST WEAKFISH FISHERY
IN THE EXCLUSIVE ECONOMIC ZONE

AUGUST 2003

United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
State-Federal Fisheries Division

FINDING OF NO SIGNIFICANT ENVIRONMENTAL IMPACT

The State-Federal Fisheries Division of the Office of Sustainable Fisheries submits the attached Environmental Assessment (EA) for the Atlantic Coast Weakfish fisheries for Secretarial review under the procedures of the Atlantic Coastal Fisheries Cooperative Management Act and Magnuson-Stevens Fishery Conservation and Management Act. This EA was developed as an integrated document that includes a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA). Copies of the EA/RIR/FRFA are available at the following address:

State-Federal Fisheries Division, F/SF8
National Marine Fisheries Service
1315 East West Highway
Silver Spring, MD 20910
(301) 713-2334

or

http://www.nmfs.noaa.gov/sfa/state_federal/state_federal.htm

The final action will implement the following measures:

- Allow non-directed fisheries using a mesh size less than 3 1/4-inch square stretch mesh or 3 3/4-inch diamond stretch mesh for trawls and 2 7/8-inch stretch mesh for gillnets to possess no more than 300 pounds of weakfish during any one day or trip, whichever is longer in duration (an increase of 150 pounds over the current Federal regulations).
- Remove the State Connecticut from the list of states where weakfish caught in the EEZ for commercial purposes can be landed.
- Add to our regulations the Director, Office of Sustainable Fisheries, as an official who can grant Exempted Fishing Permits.
- Add Atlantic Coastal Act and Director to the definition section.

The EA/RIR/FRFA considers information contained in the Atlantic States Marine Fisheries Commission's Amendment 4 to the Interstate Fishery Management Plan for Weakfish dated November 2002. All information used is herein incorporated by reference.

Having reviewed the EA/RIR/FRFA and the available information relative to this action, I have determined that the final action will not have a significant impact on the quality of the human environment with specific reference to the criteria contained in NAO 216-6 implementing the National Environmental Policy Act, and that preparation of an Environmental Impact Statement is not required by Section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.

William T. Hogarth, Ph.D.
Assistant Administrator for Fisheries, NOAA

Date

Abstract

The National Marine Fisheries Service (NOAA Fisheries) issues regulations that will modify management restrictions in the Federal weakfish fishery in a manner consistent with the recommendations made by the Atlantic States Marine Fisheries Commission (Commission) in Amendment 4 of the Commission's Interstate Fisheries Management Plan for the species. In short, this Federal regulatory change increases the permitted non-directed incidental catch of the species from 150 pounds to 300 pounds per day or trip, whichever is longer in duration. Analysis of the best available data suggests that the increase would not alter current fishing practices or effort, or increase the number of weakfish caught – the 150 pound increase simply converts 150 pounds of weakfish, which would be caught and discarded at sea dead regardless, into 150 pounds of weakfish caught and landed. Accordingly, no significant impact is found and the environmental analysis that supports such a finding is set forth herein.

Change from Draft EA/RIR/IRFA

In a July 16, 2003, letter from Paul Diodati, the Director of the Division of Marine Fisheries, Commonwealth of Massachusetts to Robert Beal, the Director of the Interstate Fisheries Management Program for the Commission, Massachusetts requested that its *de minimis* status be reversed because under the current management regime it is difficult to codify and enforce the *de minimis* status. Massachusetts was granted this status in February 2003, and that change was included in the Draft EA/RIR/IRFA. The Commission permits a state to apply for *de minimis* status if, for the previous two years, its combined average commercial and recreational landings (by weight) constitute less than 1 percent of the annual coastwide commercial and recreational landings of weakfish for the same two year period. Once *de minimis* status is granted, designated states are relieved of many of the burdens for monitoring weakfish catches, but must submit annual reports to the Weakfish Management Board justifying the continuance of *de minimis* status. The process of withdrawal from *de minimis* status is far less complicated than inclusion into such a category. The request to withdraw from *de minimis* status was forwarded to the Commission's Weakfish Management Board (Weakfish Board), and on August 29, 2003, the Weakfish Board agreed to withdraw their finding that Massachusetts be given *de minimis* status. Under either status -- that is, as a *de minimis* state or not -- the actions of Massachusetts are not expected to contribute significantly to the Commission's coastwide conservation program for the species or have any impact on the environment since it will just allow Massachusetts fishermen to land in their state up to 300 lbs of allowable bycatch instead of throwing it over dead as bycatch. No fishing practices are expected to change. The Draft EA/RIR/IRFA addressed Massachusetts becoming a *de minimis* state by removing it as a state where commercially caught weakfish from the EEZ could be landed (50 CFR 697.7(a)(7)). Now that Massachusetts is not a *de minimis*, as of August 29, 2003, the final EA/RIR/IRFA will reflect this change by not removing the Commonwealth of Massachusetts as a state where commercially caught weakfish from the EEZ can be landed (50 CFR 697.7(a)(7)).

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1.0. PURPOSE AND NEED FOR ACTION

1.1 Need for Action and Objective

The need for this action relates to the Secretary of Commerce's (Secretary) statutory obligation under Section 804(a) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) to support the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Program. Here, the Commission recently adopted Amendment 4 to its Interstate Fishery Management Plan (ISFMP) for Weakfish (Amendment 4), which is designed to continue the stock recovery seen during the implementation of Amendment 3 of the Weakfish ISFMP, to benefit the ecosystem as well as commercial and recreational fisheries, and to continue to increase the age and size structure of the population, as well as its geographic range. In furtherance of this plan, the Commission requested Secretarial support in the form of an amendment to Federal weakfish regulations. The Commission's recommended Federal regulatory change would reduce dead discards (bycatch) by allowing an additional amount of incidental catch to be landed, but by such a minimal amount that it would not encourage directed fishing. The context of the Commission's recommendation, as well as the history and authority of Federal weakfish management is discussed as follows.

1.2 Management Authority and History

NOAA Fisheries is modifying Federal weakfish regulations in the EEZ under the authority of § 804 of the Atlantic Coastal Act, 16 U.S.C. 5101 et seq. The Atlantic Coastal Act states that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.) and after consultation with the appropriate Fishery Management Council(s), the Secretary may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nm offshore. These regulations must be (1) compatible with the effective implementation of an ISFMP developed by the Commission, and (2) consistent with the national standards set forth in Section 301 of the Magnuson-Stevens Act.

To assist the Secretary in developing Federal regulations that are compatible with the effective implementation of a Commission ISFMP, the Commission includes a section containing recommendations to the Secretary in their ISFMPs or amendments and addenda to their ISFMPs. These recommendations to the Secretary are included in the public review process as part of the ISFMP, amendment or addendum under development by the Commission. The recommendations are an important part of developing regulations that are compatible with the Commission's Interstate Fishery Management Program for Atlantic Coast fisheries. NOAA Fisheries' personnel are involved in the Commission ISFMP process through their participation on the plan development/plan review teams, technical committees, stock assessment and other subcommittees, fishery management boards, and the ISFMP policy board.

Management History - In May 1996, the Commission approved and implemented Amendment 3 to the ISFMP for Weakfish (Amendment 3) which included recommendations to the Secretary for weakfish management in the EEZ. On September 22, 1997 (62 FR 49451),

NOAA Fisheries, working closely with the Commission and its member states, implemented the following weakfish regulations in the EEZ under the Atlantic Coastal Act as described at 50 CFR part 697.7(a): (1) a 12 inch possession limit; (2) prohibits fishing for weakfish with a minimum mesh size of 3 1/4-inch square stretch mesh or 3 3/4-inch diamond stretch mesh for trawls and 2 7/8-inch stretch mesh for gillnets; (3) a prohibition on the possession of more than 150 lb (67 kg) of weakfish during any one day or trip, whichever is longer, in the EEZ when using a mesh size less than 3 1/4-inch square stretch mesh or 3 3/4-inch diamond stretch mesh for trawls and 2 7/8-inch stretch mesh for gillnets; (4) the closure of an area in the EEZ off North Carolina to flynet fishing; (5) a prohibition on the possession of any weakfish in the closed area when fishing with shrimp trawls or crab trawls; and (6) a prohibition on the landing of weakfish caught commercially in the EEZ in *de minimis* states (*de minimis* states are listed in Amendment 3, while states where weakfish landings are allowed are listed in the Federal regulations). Regulations 3 and 6 have a bearing on the current rulemaking.

Regulation 3 is, essentially a bycatch provision. Bycatch is defined in the Magnuson-Stevens Act as “fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards.” In this case, since vessels fishing for weakfish are required to adhere to the minimum mesh sizes described in regulation 2, vessels using smaller mesh sizes can not direct effort on this species. However, since vessels fishing with smaller mesh sizes are likely to encounter weakfish, any weakfish in excess of 150 pounds, taken by such vessels, would be considered bycatch under this provision. Regulation 6 supports the ability of the states to effectively monitor landings. The Commission permits a state to apply for *de minimis* status if, for the previous two years, its combined average commercial and recreational landings (by weight) constitute less than 1 percent of the annual coastwide commercial and recreational landings of weakfish for the same two year period. Once *de minimis* status is granted, designated states are relieved of many of the burdens for monitoring weakfish catches, but must submit annual reports to the Weakfish Management Board justifying the continuance of *de minimis* status. In addition, under part 697.3(c) “Relation to other Federal and state laws,” these regulations do not preempt more restrictive state laws, or state enforcement of more restrictive state laws, with respect to weakfish fishing.

Under Amendment 4, approved by the Commission on November 21, 2002, states may allow fishermen targeting species other than weakfish (i.e. non-directed fisheries) to possess no more than 300 lb (135 kg) in any one day or trip (whichever is the longer period of time) as allowable bycatch in state waters, provided that there is at least an equal poundage of other species on board the vessel. The provision for equal or greater poundage of other species is more restrictive than would be implemented in Federal waters. Any state that chooses to implement a 300 lb allowance must have a reporting system in place that will allow adequate quantification of any such catch. State management plans must also account for any harvest of weakfish from non-directed fisheries. The required reporting systems will provide information on weakfish bycatch that will be needed by the Commission and NOAA Fisheries in developing future regulations. Such information is currently limited.

Results of the most recent stock assessment for weakfish indicate that weakfish are at a high level of abundance and subject to low fishing mortality rates (fishing mortality is below the target of 0.31 and well below the fishing mortality threshold of 0.5); a positive trend for the

weakfish population (see Section 3.1 for status of the stocks). States have expressed concern about increased numbers of weakfish, associated with the current high level of abundance, being discarded dead as bycatch in non-directed fisheries. Although research on discard mortality for weakfish is not available, fishermen have indicated that most discards are dead, and therefore, discard mortality has been assumed to be 100% in stock analyses. The Commission increased the incidental catch rate from 150 lb (67 kg) to 300 lb (135 kg) per day or trip, whichever is longer in duration, in Amendment 4 to address concerns about dead discards. The Commission believes that this increase will contribute little to total landings, while the required reporting systems will result in improved data for future stock assessments. All of the commercial management measures in Amendment 3 that led to positive trends in the weakfish population remain in effect under Amendment 4.

Amendment 4 states, in Section 4.9, the importance of five compatible Federal regulatory measures in the EEZ. These five measures were: (1) to require a minimum weakfish size of 12 inches total length; (2) to require that weakfish recreationally harvested in the EEZ comply with the laws of the state where they are landed; (3) to require that weakfish commercially harvested in the EEZ be landed in accordance with the landing laws of the state in which they are landed, with the exception that weakfish caught commercially in the EEZ may not be landed in a *de minimis* state; (4) to require minimum mesh sizes in the EEZ consistent with a 12-inch minimum fish size. Non-directed fisheries using smaller mesh sizes may possess no more than 300 lb (135 kg) of weakfish during any one day or trip, whichever is longer in duration; and (5) to require the use of flynets in EEZ waters south of Cape Hatteras to be consistent with adjacent state regulations. It should be noted, however, that at the time the Commission adopted Amendment 4, the Federal government already had compatible regulations for some of the five measures (the twelve inch minimum size, for example).

1.3 Recommendations to the Secretary

On March 13, 2003, the Secretary received the following two recommendations from the Commission to implement regulations under the Atlantic Coastal Act: (1) require that weakfish recreationally harvested in the EEZ comply with the laws of the state where they are landed; and (2) allow non-directed fisheries using smaller mesh sizes to possess no more than 300 lb (135 kg) of weakfish during any one day or trip, whichever is longer in duration (an increase of 150 lb (67 kg) per day or trip). These two recommendations were part of five measures approved in Amendment 4 (Section 4.9), but the only two that the Commission believed required changes to the current Federal regulations.

Recommendation 1 would require that weakfish recreationally harvested in the EEZ comply with the laws of the state where they are landed. NMFS believes that the current provisions at 50 CFR part 697.3(c) - “The regulations in this part do not preempt more restrictive state laws, or state enforcement of more restrictive state laws, with respect to weakfish fishing and American lobster fishing” appear compatible with the intent of this recommendation. If a state has a regulation that is more restrictive than the Federal regulation in the EEZ, the Federal law would likely not prohibit the state from enforcing its more restrictive state law upon landing in that state. Therefore, changes to current regulations are not required to address this recommendation.

Recommendation 2 would allow non-directed fisheries using smaller mesh sizes to possess no more than 300 lb (135 kg) of weakfish during any one day or trip, whichever is longer in duration (an increase of 150 lb (67 kg) per day or trip over the current Federal EEZ regulation). The Commission stated in its letter to the Secretary that an increase in weakfish biomass has resulted in greater weakfish discards, and that a 300 lb bycatch allowance will help to reduce dead discards, while not encouraging directed fishing. The Commission believes that this recommendation is compatible with Amendment 4. This recommendation does require a change to current Federal regulations.

Other Changes - Amendment 4 included a recommendation to the Secretary that weakfish commercially harvested in the EEZ be landed in accordance with the landing laws of the state in which they are landed, with the exception that weakfish caught commercially in the EEZ may not be landed in a *de minimis* state. This recommendation was not included in the letter from the Commission since this provision is addressed in current regulations. However, since the Commission found, and the Secretary agreed, that the State of Connecticut is now a *de minimis* state within the definition of the term, this state will be removed from the list of states where commercially caught weakfish from the EEZ can be landed (see 50 CFR part 697.7(a)(7)). This measure supports the ability of the states to effectively monitor landings. The Commission permits a state to apply for *de minimis* status if, for the previous two years, its combined average commercial and recreational landings (by weight) constitute less than 1 percent of the annual coastwide commercial and recreational landings of weakfish for the same two year period. The Federal definition is compatible and applies to Connecticut here. Once *de minimis* status is granted, designated states are relieved of many of the burdens for monitoring weakfish catches, but must submit annual reports to the Weakfish Management Board justifying the continuance of *de minimis* status. Because Connecticut is now a *de minimis* state by virtue of the Commission’s findings, on which the Secretary concurs, and because the Atlantic Coastal Act’s most restrictive language at 50 CFR 697.3(c) would prevent commercial landings in this state, independent of Federal action, NMFS considers the change largely administrative and not subject to alternative analysis.

Table 1: Weakfish *de minimis* Atlantic Coast States under Amendment 3 & 4 as of 1/2003.

State	Under Amendment 3	Under Amendment 4
CT	No	Yes*
MA, RI, NY, NJ, DE, MD, VA, NC	No	No
SC, GA, FL	Yes	Yes

*Change to *de minimis* status under Amendment 4 (November 2002). The final regulations will be determined by July 2003.

2.0 SUMMARY OF THE ALTERNATIVES

This section provides a summary and basis for all the alternatives considered in this rulemaking.

2.1. Incidental Catch Allowance

Alternative 1: (No Action)

This alternative would take no Federal action and would therefore allow current Federal regulations for vessels using smaller mesh sizes to remain unchanged. Current regulations prohibit the possession of more than 150 lb (67 kg) of weakfish during any one day or trip, whichever is longer, in the EEZ when using a mesh size less than 3 1/4-inch (8.3 cm) square stretch mesh (as measured between the centers of opposite knots when stretched taut) or 3 3/4-inch (9.5 cm) diamond stretch mesh for trawls, and 2 7/8-inch (7.3 cm) stretch mesh for gillnets. The Atlantic Coastal Act allows NOAA Fisheries to support, through the development of compatible regulations, the effective implementation of an ISFMP. This alternative is not compatible with recommendations made to the Secretary by the Commission, and is not compatible with the effective implementation the Commission's ISFMP for Weakfish because it ignores the Commission's efforts in Amendment 4 to reduce bycatch.

Alternative 2: Allow non-directed fisheries using a mesh size less than 3 1/4-inch square stretch mesh or 3 3/4-inch diamond stretch mesh for trawls and 2 7/8-inch stretch mesh for gillnets to possess no more than 300 lb (135 kg) of weakfish during any one day or trip, whichever is longer in duration (PREFERRED ALTERNATIVE)

The alternative would allow non-directed fisheries using a mesh size less than 3 1/4-inch square stretch mesh or 3 3/4-inch diamond stretch mesh for trawls and 2 7/8-inch stretch mesh for gillnets to possess no more than 300 lb (135 kg) of legal-sized (12-inches or greater) weakfish during any one day or trip, whichever is longer in duration (an increase from the current 150 lb (67 kg) per day limit). The Atlantic Coastal Act allows NOAA Fisheries to support through the development of compatible regulations the effective implementation of an ISFMP. This alternative is compatible with recommendations made to the Secretary by the Commission, and is compatible with the effective implementation the Commission's ISFMP for Weakfish. Regulations developed under the Atlantic Coastal Act must also meet the National Standards of the Magnuson-Stevens Act. National Standard 9 states that "conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch." The Magnuson-Stevens Act defines bycatch as "fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards." Alternative 2 would convert up to an additional 150 lb (67 kg) of bycatch (per day or trip) into incidental catch by allowing that catch, which would otherwise be discarded at sea dead, to be landed. Since landings, unlike discards, are reported in the states' and NOAA Fisheries' databases, this alternative could provide a more accurate portrayal of total catch for use in future assessments of the weakfish stock. In addition, NOAA Fisheries believes this increase of 150 lb (67 kg) of

landings will not encourage fishermen using smaller mesh sizes to direct their fishing at weakfish, while a greater allowance may result in such vessels intentionally fishing for weakfish.

Alternative 3: Prohibit non-directed fisheries using smaller mesh sizes to possess weakfish

This alternative would prohibit retention of any weakfish by vessels using smaller mesh sizes. Current regulations allow the possession of no more than 150 lb (67 kg) of weakfish during any one day or trip, whichever is longer, in the EEZ when using a mesh size less than 3 1/4-inch (8.3 cm) square stretch mesh (as measured between the centers of opposite knots when stretched taut) or 3 3/4-inch (9.5 cm) diamond stretch mesh for trawls and 2 7/8-inch (7.3 cm) stretch mesh for gillnets. This alternative would be counter to National Standard 9 since it would result in an increase in bycatch. In other words, NOAA Fisheries does not believe that more restrictive regulations would result in any lower mortality, but only in greater discards of dead fish. Current regulations allow up to 150 lbs (67 kg) of incidentally caught weakfish to be landed while this alternative would require that all weakfish caught by vessels using smaller meshes be discarded as bycatch. In addition, the Atlantic Coastal Act allows NOAA Fisheries to support through the development of compatible regulations the effective implementation of an ISFMP. This alternative is not compatible with recommendations made to the Secretary by the Commission in its March 13, 2003, letter; is not compatible with the effective implementation the Commission's ISFMP for Weakfish; and does not meet the purpose and need for this action. Therefore, this alternative will not be discussed any further in this document.

3.0 DESCRIPTION OF AFFECTED ENVIRONMENT

3.1 Status of the Stocks

Amendment 4 (Section 1.2.2 Stock Assessment Summary) includes a summary of the most up-to-date weakfish stock assessment developed by the Atlantic Coast States, the Commission, and NOAA Fisheries. Therefore, excerpts from Amendment 4 are presented below.

A weakfish stock assessment was conducted in 1999, based on data through 1998, and reviewed by the Commission's Stock Assessment Review Committee for peer review at the 30th Northeast Regional Stock Assessment Workshop, in 2000. This report indicated that weakfish were "at a high level of abundance and subject to low fishing mortality rates." This assessment was updated in 2002 with data through 2000. Much of the language in Amendment 4 was taken from that updated assessment (Kahn 2002).

Recent history of the coastwide stock shows that spawning stock biomass (SSB, total weight of fish in a stock that are old enough to spawn) estimates were low from 1982 through 1985. High recruitment of age one weakfish in 1985-1987 produced a brief increase in biomass. By 1989, biomass had again declined and remained low through 1993. Since then, biomass has been building to higher levels. While the exact level of bias in the most recent estimate is unknown, the current level of SSB is well above the threshold level of 31.8 million lb (14,400 MT.)

Estimates of fishing mortality (F, the rate fish are being removed by human activity) range from a high in 1994 of 2.52 to a low in 2000 of 0.12. Since 1995, estimates of F have been below 0.50. The 2000 estimate of 0.12 could be underestimated. Despite this bias, the corrected value would still be below the fishing mortality target of 0.31 and far below the fishing mortality threshold of 0.50.

Management measures implemented under Amendment 3 resulted in an increase in the size and age structure of the weakfish population. In 1982, the estimate of the proportion of age 6+ fish was 1.0 percent of the total. By 1990, this had shrunk to only 0.3 percent of the total number of weakfish. This proportion has been increasing in recent years, reaching 6.8 percent of the total in 2001. Measures implemented under Amendment 4 are designed to continue the expansion of the weakfish age and size structure to that necessary for full restoration of the stock, and to return weakfish to their previous geographic range.

3.2 Fishery Participants, Gear Types, and Affected Area

This action is not expected to change fishing practices in terms of the fishery participants, gear types, affected areas, or number of tows. Trawl and gillnet vessels directing effort at weakfish would not be impacted by this action because they are required to use larger mesh sizes, as specified in current regulations. However, weakfish are also caught as incidental catch or bycatch in other gears, such as trawls, pound nets, haul seines, and gillnets, that uses mesh sizes smaller than required in the directed fishery. Small mesh trawls and gillnets are expected to produce the majority of incidental catch of weakfish. Vessels that participate in the small mesh fishery are not allowed to target weakfish because they are likely to retain high proportions of sub-legal sized fish. The action is not expected to result in changes in fishing practices of vessels using small mesh sizes because sorting large catches to remove sub-legal fish, as well as legal-sized weakfish in excess of the incidental catch allowance, is difficult and time consuming work. The increase of 150 lb in allowed retention of legal-sized weakfish would provide little economic incentive to the fishermen to change fishing practices when such changes are likely to increase the workload of the crew. Weakfish are not a highly valuable species (in dollars-per-pound - see Section 4.1 under economic impacts) and an increase of 150 lb, even if landed, would add little to the value of any trip.

3.3 Habitat

The area affected by the action for the weakfish fishery has been identified as EFH for the Northeast Multispecies; Atlantic Sea Scallop; Atlantic Surf Clam and Ocean Quahog; Summer Flounder, Scup, and Black Sea Bass; Atlantic Mackerel, Squid, and Butterfish; Bluefish; Atlantic Billfish; and Atlantic Tunas, Swordfish and Sharks Fishery Management Plans. The preferred alternative outlined in this action would not change fishing practices in terms of the type of gear used (trawls and gillnets), area fished, or effort levels beyond those occurring in the current fishery. This action is not expected to change the impact on EFH or to allow substantial damage to ocean and coastal habitats and/or EFH, adversely affect entities listed in or eligible for listing in the National Register of Historic Places, or cause loss/destruction of significant scientific, cultural, or historic resources. The action in the context of the fishery as a whole will not have

an adverse impact on EFH; therefore, after conferring with the NMFS' Habitat Office, it was determined that an EFH consultation is not required.

3.4 Protected Species under the Endangered Species Act and Marine Mammal Protection Act

On September 26, 1995, NOAA Fisheries issued a Section 7 Biological Opinion regarding regulations that would prohibit the harvest and possession of weakfish in the Atlantic coast EEZ. This regulation did not go into effect. On June 27, 1997, a Section 7 consultation to assess the affects of the weakfish fishery, as well as the preferred alternative, on listed species under NOAA Fisheries' jurisdiction, was completed. The biological opinion concluded that based on available scientific information on the entire weakfish fishery, that the weakfish fishery itself may adversely affect, but neither the fishery nor the proposed regulations were likely to jeopardize the continued existence of any listed species under NOAA Fisheries jurisdiction. The preferred alternative, which included a provision to limit the possession of weakfish in the EEZ when using small mesh sizes (less than 3 1/4-inch square stretch mesh or 3 3/4-inch diamond stretch mesh for trawls and 2 7/8-inch stretch mesh for gillnets), to no more than 150 lb (67 kg), was implemented on September 22, 1997. The current action, which would merely increase the amount of weakfish that could be retained, is not expected to change fishing practices, area fished, effort, or the number or rate of interactions with marine mammals. Fishing activities conducted pursuant to this rule should not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on this fishery. An informal Section 7 consultation was initiated on May 28, 2003.

4.0 ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES CONSIDERED

This section analyzes and compares impacts of alternatives together under grouping by ecological, economic, and social impacts.

4.1 Incidental Catch Allowance

As described in Section 2, the alternatives considered for the incidental catch allowance are:

Alternative 1: (No Action)

Alternative 2: Allow non-directed fisheries using a mesh size less than 3 1/4-inch square stretch mesh or 3 3/4-inch diamond stretch mesh for trawls and 2 7/8-inch stretch mesh for gillnets to possess no more than 300 lb (135 kg) of weakfish during any one day or trip, whichever is longer in duration (**Preferred Alternative**)

Ecological Impacts

Neither of the alternatives evaluated here are expected to cause fishermen to alter fishing practices in terms of the type of gear used, area fished, effort levels, or protected species interactions. Alternative 1 would maintain current regulations in the EEZ that prohibit possession of more than 150 lb of legal size weakfish in non-directed fisheries that use small

mesh sizes. Alternative 2 would allow weakfish possession by vessels using smaller mesh sizes to increase by 150 lb (67 kg), to 300 lb (135 kg), if those weakfish are of legal size (12 inches or greater). This is not expected to result in an increase in weakfish mortality because it would merely convert an additional 150 lb of legal size weakfish from discarded bycatch to landings. However, NOAA Fisheries believes that an incidental catch allowance above 300 lb (135 kg) may lead to a change in fishing practices, because at some greater level of allowance the value of the additional weakfish catch is likely to outweigh the costs associated with the extra time needed to sort the catch to remove sub-legal sized fish.

NOAA Fisheries collects weakfish catch and discard data through on-board observer coverage and vessel trip reports. Observer data for trips that caught weakfish are limited but, during 2001 and 2002, observers on seven small mesh otter trawl trips (total of 20 tows) that were directing on longfin squid, scup, mantis shrimp, butterfish, and croaker, also noted weakfish catches. One trip exceeded the current 150 lb limit, and two trips recorded discards of weakfish. The one trip that exceeded the 150 lb limit was directing on croaker. Five tows that caught weakfish were observed during this trip, including three that exceeded 150 lb. In this limited sample of small mesh otter trawls, 14.3 percent (1/7) of observed trips and 15 percent (3/20) of observed tows exceeded the current 150 lb possession limit. Observer data for weakfish caught by gillnets over the same period are less informative. Observers on a majority of gillnet trips focus on marine mammal interactions and therefore data for weakfish discards are incomplete. In 13 observed trips where weakfish were caught (total of 30 tows), no trips exceeded the current 150 lb limit, and only one trip recorded discards. The range in pounds of weakfish caught per trip was from 0.5 to 60 with an average of 5.72 lb. While data for weakfish catches from the observer program are limited, they document that the small mesh otter trawl and gillnet fisheries catch weakfish, occasionally in large quantities, incidental to their directed fisheries for other species.

Vessel trip reports from the NOAA Fisheries' Northeast Region, for years 1998 - 2002 also document weakfish catches in small mesh fisheries. Of 1,116 trips by otter trawl vessels using small mesh nets in the EEZ, that reported catches of weakfish, 107 (10 percent) caught more than the current 150 lb possession limit. Five percent of those trips (52 trips) reported catches exceeding 300 lb (22, or 2 percent exceeded 1,000 lb). Only 4 gillnet trips fishing in the EEZ while using small mesh sizes, during 1998 - 2002, reported weakfish catches. Three trips reported minimal catches (20 lb, or less), while the fourth trip caught over 4,500 lb. These data also demonstrate that small mesh otter trawls and gillnets, targeting other species, catch weakfish, sometimes in large quantities (over 1,000 lb).

In summary, the intent of the 150 lb increase in incidental catch allowance is to convert some additional amount of bycatch to landings, without creating an incentive to direct small mesh fishing effort at weakfish. As noted in Section 3.2, above, the increase of 150 lb of bycatch allowance is not expected to be sufficient to provide such incentive. Therefore, the action will not have any adverse ecological impact because neither of the alternatives evaluated here will cause fishermen to alter their current fishing practices in terms of the type of gear used, area fished, effort levels, or protected species interactions. The only difference is the amount of incidental catch they can land for a minimal economic gain.

Social Impacts

Neither of the alternatives are expected to cause fishermen to alter their current fishing practices in terms of the type of gear used, areas fished, levels of effort, or protected species interactions, as noted above and in Section 3.2. The only difference between the alternatives is the amount of incidental catch that will be allowed: Alternative 1 - 150 lb; and Alternative 2 - 300 lb. Therefore, the action is not expected to have any adverse social impacts or any social benefits.

Economic Impacts

Data for evaluating the economic impacts on affected vessels are limited, but projections of average revenues per-trip, under the two alternatives, were made based on the following analysis. Average price-per-pound was estimated based on 2001 total revenues divided by total catch from the EEZ, as reported in Fisheries of the United States, 2002. The average price received by fisherman reporting weakfish catch in the EEZ in 2001 was \$0.614 per pound. If an effected vessel were to land 150 lb of weakfish, as currently permitted (Alternative 1), \$92 in revenue could be realized, per trip. If Alternative 2 were implemented, an additional \$92, for a weakfish total of \$184 per trip (double the current amount) would be possible. For a more accurate picture of the expected economic impacts for the two alternatives, actual reported catches from individual vessel trip records, from 1998 - 2002, were multiplied by average price-per-pound of weakfish from the EEZ to determine estimated revenues per trip. Since vessels may not catch the full 150 lb or 300 lb allowed in Alternative 1 and 2, revenues for each alternative were projected as the average for those trips that reported from 1 to 150 lb (Alternative 1) and from 151 to 300 lb (Alternative 2). Catches from trips that reported over 150 lb were capped at the 150 lb limit (for Alternative 1); catches from trips that reported over 300 lb were capped at the 300 lb limit (Alternative 2) for these calculations. Calculated revenues for sale of allowed weakfish landings under Alternative 1 averaged \$22; potential revenues for Alternative 2 were estimated at \$160 per trip. Based on 1998 - 2002 vessel trip data, total annual revenues for all non-directed weakfish trips are projected to be about \$6,200 under Alternative 1, and about \$7,800, if Alternative 2 were to be implemented. Therefore, the action will have a total maximum economic benefit of approximately \$1,600 to the coastwide fishery, per year. No adverse economic impacts are expected.

Conclusion

Alternative 2 is the preferred alternative because:

1. It is compatible with recommendations from the Commission as required by the Atlantic Coastal Act;
2. It is not expected to change fishing practices, type of gear used, area fished, effort levels, or protected species interactions;
3. It is more efficient and will likely minimize bycatch to the extent practicable, as required by National Standard 9;

4. It will allow up to 150 lb (67 kg) per trip of currently discarded bycatch to be landed as incidental catch and thereby to be accounted for in evaluation of stock status; and
5. It would allow up to an additional \$92 in revenue, per trip, to effected fishermen.

A comparison of each alternative is presented in Section 4.6, Table 2.

4.2 Impacts on Essential Fish Habitat

Please see Section 3.3 for impacts on EFH.

4.3 Impacts on Protected Species

This action is not expected to alter fishing practices or fishing effort and will not have any impacts not previously considered on endangered or threatened species, marine mammals, or critical habitat of these species. While the action would increase the amount of incidental catch allowed to be landed, it will not result in increased fishing effort or changes in fishing practices. Thus, no increased interactions with or impacts to critical habitat of sea turtles or other protected species is anticipated. (see Section 3.4 for further information.)

4.4 Environmental Justice Concerns

Executive Order 12898 requires that Federal actions address environmental justice in the decision-making process. In particular, the environmental effects of the actions should not have a disproportionate effect on minority and low-income communities. The action in this document is not expected to have any significant social, economic, or human health effects. There will likely be a small positive economic effect in the landing of an extra 150 lb (67 kg) of weakfish during any one day or trip.

4.5 Coastal Zone Management Act Concerns

NOAA Fisheries has determined that this action is consistent to the maximum extent practicable with the enforceable policies of those coastal states along the Atlantic Coast. Letters were sent out to those states for their concurrence.

4.6 Comparison of Alternatives

Table 2. Comparison of Alternatives

Alternative	Pros	Cons
1 - Take No Federal Action Continue to allow non-directed fisheries using smaller mesh sizes to possess no more than 150 lb of weakfish during any one day or trip, whichever is longer in duration	no change to regulation no new ecological, economic, social, or CZM impacts.	does not reduce bycatch mortality is not responsive to the Commission's recommendation or fishermen concerns is not compatible with the effective implementation of the Commission's ISFMP for Weakfish, as required by the Atlantic Coastal Act.
2 - Allow non-directed fisheries using smaller mesh sizes to possess no more than 300 lb of weakfish during any one day or trip, whichever is longer in duration	reduces bycatch by allowing additional quantities to be landed insignificant economic incentive to encourage directed fishing no additional ecological, social, or CZM impacts is responsive to the Commission's recommendation or fishermen is compatible with the effective implementation of the Commission's ISFMP for Weakfish, as required by the Atlantic Coastal Act.	

4.7 Cumulative Impacts

The preferred alternative would allow fishermen in non-directed fisheries using smaller mesh sizes to possess no more than 300 lb (135 kg) of weakfish during any one day or trip, whichever is longer in duration (an increase of 150 lb (67 kg) per day or trip). This alternative, even when viewed collectively with the management measures in other area fisheries, is not expected to effect a significant enough change to alter fishing practices in terms of fishery participants, gear types, affected areas or habitat (EFH), effort levels (number of tows), or the number of protected species interactions. In other words, no more or less weakfish will be caught, no more or less effort and gear will be engaged nor habitat encountered. The only impacts anticipated are: less bycatch being discarded dead; a small increase in incidental catch; and a small economic gain from allowing the sale of an additional 150 lb (67 kg) of incidental catch per day or trip. In addition, the weakfish stock assessment would be improved by a more accurate accounting of the total catch of the species. Total catch includes landings and dead discards, but estimates of

discards are limited by the level of observer coverage on vessels in the small mesh fishery. The conversion of some additional amount of bycatch to landings will allow that portion of the catch, which would have been discarded, to be accounted for as part of weakfish landings and therefore to be included in future stock assessments. Consequently, NOAA Fisheries does not believe that the alternative will have cumulative effects. In addition, there are no other actions currently being considered or planned that have any potential impacts on this action.

5.0 MITIGATION AND UNAVOIDABLE ADVERSE IMPACTS

5.1 Mitigating Measures

The action will assist NOAA fisheries in achieving the objective of this rulemaking and the Atlantic Coastal Act and the national standards of the Magnuson-Stevens Act and are not expected to have any significant ecological, social, or economic impacts. While NOAA Fisheries anticipates no significant adverse impacts from this action, the agency will be in a position to mitigate potential, not reasonably foreseeable impacts, if any, by:

- Monitoring the impacts of this action on the fishery and considering public comments received from this rule.
- Continuing to work closely with the Commission's Weakfish Management Board, and monitoring the Commission's bycatch reporting system to make sure there is adequate quantification of any such catch.

5.2 Unavoidable Adverse Impacts

The action will assist NOAA fisheries in achieving the objective of this rulemaking and the Atlantic Coastal Act and the national standards of the Magnuson-Stevens Act and are not expected to have any unavoidable adverse impacts.

5.3 Irreversible and Irrecoverable Commitment of Resources

The action will assist NOAA fisheries in achieving the objective of this rulemaking, the Atlantic Coastal Act, and the national standards of the Magnuson-Stevens Act and are not expected to have any irreversible or irretrievable commitments of resources.

6.0 ECONOMIC EVALUATION

This section assesses the economic impacts of the alternatives presented in this document.

6.1 Number of fishing and dealer permit holders

No fishing or dealer permits are required in the weakfish fishery.

6.2 Gross revenues of fishermen

As described in Section 4.1, above, data for evaluating the economic impacts of the two alternatives on affected vessels are limited. However, rough projections of gross revenues, under the two alternatives, were developed in that section. If an affected vessel were to land 150 lb of weakfish, as currently permitted (Alternative 1), \$92 in revenue could be realized, per trip. If Alternative 2 were implemented, an additional \$92 for a total of \$184 per trip (double the current amount) would be possible. Based on 1998 - 2002 vessel trip data and the average price in 2001, total coastwide annual revenues to the fishery for non-directed weakfish trips are projected to be about \$6,200 under Alternative 1, and about \$7,800 if Alternative 2 is implemented. However, if the stock continues to grow, the amount and frequency of incidental catch may increase in the future. In addition, price per pound varies over time. Therefore, these projected revenues can be used only as an indicator of the relative value of weakfish landings in the non-directed, small mesh fisheries.

6.3 Variable costs and net revenues of fishermen

Data are not available to determine costs and net revenues to fishermen for the two alternatives. However, since neither of the alternatives is expected to result in changes in fishing practices or fishing effort, costs are not expected to be impacted. Therefore, net revenues would be effected only by changes in the amount of incidental catch that is allowed to be landed and sold.

6.4 Expected economic impacts of the alternative

Expected economic impacts are provided in Section 4.1, above.

7.0 REGULATORY IMPACT REVIEW

The Regulatory Impact Review (RIR) is conducted to comply with Executive Order 12866 (E.O. 12866) and provides analyses of the economic benefits and costs of each alternative to the nation and the fishery as a whole. Certain elements required in an RIR are also required as part of an environmental assessment (EA). Thus, this section should be considered only part of the RIR, the rest of the RIR can be found throughout this document.

7.1 Description of the management objectives

Please see Section 1 for a description of the objective of this rulemaking.

7.2 Description of the fishery

Please see Section 3 for a description of the fisheries that could be affected by this rulemaking.

7.3 Statement of the problem

Please see Section 1 for a description of the problem and need for this rulemaking.

7.4 Description of each alternative

Please see Section 2 for a summary of each alternative, Section 4 for a complete description of each alternative and its expected ecological, social, and economic impacts, and Table 2 for a comparison of each alternative.

7.5 Economic analysis of expected effects of each alternative relative to the baseline

NOAA Fisheries does not believe that the national net benefits and costs would change significantly in the long term as a result of implementation of this action. Table 3 indicates the potential net economic benefits and costs of each alternative. Also, please see Section 4.1 for further information.

7.6 Conclusion

Under E.O. 12866, a regulation is a “significant regulatory action” if it is likely to: 1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; 2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; 3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights, and obligation of recipients thereof; or 4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. The action described in this document does not meet the above criteria. Here, based on trip data reported during 1998 - 2002 and average weakfish prices from 2001, the action will have a maximum economic effect, which would result in a total benefit of approximately \$1,600 to the fishery, per year. Further, the potential measure will compliment State measures already in place, and have no budgetary impacts on entitlements, grants or the like. Finally, this measure simply expands on the bycatch regulatory structure already in place in the weakfish fishery. Therefore, under E.O. 12866, the action described in this document has been determined to be not significant for the purposes of E.O. 12866. A summary of the expected net economic benefits and costs of each alternative can be found in Table 3.

Table 3. Summary of the net benefits and costs for each alternative

Alternative	Net Economic Benefits	Net Economic Costs
1 - Take No Federal Action Continues to allow non-directed fisheries using smaller mesh sizes to possess no more than 150 lb of weakfish during any one day or trip, whichever is longer in duration.	Allowing retention and sale of up to 150 lbs of weakfish per trip results in an estimated \$6,200 to the economy that would not be realized if all incidental catches of weakfish were required to be discarded.	None
2 - Allow non-directed fisheries using smaller mesh sizes to possess no more than 300 lb of weakfish during any one day or trip, whichever is longer in duration.	In short and long term, 150 lb of weakfish previously discarded as bycatch could be landed and sold by fishermen using smaller mesh sizes. Estimated gross revenues are expected to increase by about \$1,600 per year.	In short and long term, there is no additional cost to the fishermen, because fishing practices would not change.

8.0 FINAL REGULATORY FLEXIBILITY ACT

8.1 Description of the reasons why action is being considered

Please see Section 1 for a description of the reasons why this action is being considered.

8.2 Statement of the objectives of, and legal basis for, the proposed rule

Please see Section 1 for a description of the objective and legal basis of this rulemaking.

8.3 Description and estimate of the number of small entities to which the proposed rule will apply

NOAA Fisheries does not have an estimate of the number of small entities to which the action would apply because vessels most likely to be impacted are not required to hold a permit to fish for weakfish in the EEZ. However, the action would only apply to those fishermen who capture weakfish incidentally while fishing for other species using a smaller mesh size than is allowed in the directed weakfish fishery. Data for this analysis were collected with vessel trip reports and by on-board observers on a subset of trips, in some fisheries. Data were analyzed on a trip basis to estimate the number of trips that caught weakfish and, therefore, the expected impact on weakfish landings. While vessel trip reports from 1,116 otter trawl trips and four gillnet trips recorded weakfish catches when using small mesh nets, during 1998-2002, the number of vessels (small entities) that contributed to that trip count is not known. In addition, since the action addresses weakfish taken incidental to other directed fisheries, the number of vessels is likely to change over time. Also, as the weakfish population increases in abundance and becomes more difficult to avoid, the number of trips that encounter weakfish is likely to increase. However, Amendment 4 requires that any state that chooses to implement a 300 lb allowance must have a reporting system in place that will allow adequate quantification of any such catch. State management plans must also account for any harvest of weakfish from non-directed fisheries. These required

reporting systems should provide the information needed to better address impacts on number of small entities.

The Draft Environmental Assessment and Regulatory Impact Review/Regulatory Flexibility Analysis invited the public, if they so desired, to provide comments on the number of small entities that might be affected by this action. No comments were received from the public, therefore, NOAA Fisheries will proceed with the original assumptions on the number of small entities presented in the Initial Regulatory Flexibility Analysis.

8.4 Description of the projected reporting, record-keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record

The action does not have any reporting, record-keeping, and other compliance requirements.

8.5 Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities

There are no significant alternatives to the action that will meet the objectives of applicable statutes and minimize significant economic impacts. In fact, NOAA Fisheries has selected as its preferred alternative the one which it believes to have the least economic impact while achieving the objectives of this program. The Atlantic Coastal Act allows the Secretary to implement regulations in the EEZ that are compatible with the effective implementation of Interstate Fishery Management Plans developed by the Commission. The action is the result of a recommendation from the Commission for EEZ regulations that are compatible with effective implementation of the Commission's Interstate Weakfish FMP. The objective of the action is to reduce bycatch and it is not expected to have any significant economic impact on small entities. Under the preferred alternative, a small number of fishermen will be allowed to land an additional 150 lb (67 kg) of weakfish per trip that would otherwise be discarded at sea as bycatch. The average price of weakfish during 2001 was \$0.614 per lb (Fisheries of the United States, 2001), so each fisherman could expect a maximum of \$92 per trip in income that would previously not been realized.

9.0 COMMUNITY PROFILES

Section 102(2)(a) of the National Environmental Policy Act (NEPA) requires Federal agencies to consider the interactions of natural and human environments by using "a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences . . . in planning and decision-making." The Magnuson-Stevens Act also requires consideration of social impacts. Federal agencies should address the aesthetic, historic, cultural, economic, social,

or health effects which may be direct, indirect, or cumulative. Consideration of the social impacts associated with fishery management measures is a growing concern as fisheries experience variable participation and/or declines in stocks.

Data are not currently available to analyze the impacts of the action on fishing communities, however, impacts are expected to be minimal because fishermen would not be changing their current fishing practices, fishing effort, or time spent fishing. The only expected impact on communities would be to allow an additional 150 lb (67 kg) per day or trip to be landed instead of discarded dead as bycatch. This would result in up to about \$92 per trip in increased revenues to fishermen and their communities.

10.0 OTHER CONSIDERATIONS

10.1 National Standards

The analyses in this document are consistent with the National Standards (NS) set forth in the 50 C.F.R. part 600 regulations, and the Magnuson-Stevens Act.

This action is consistent with NS 1 in that it would prevent overfishing because 150 lb (67 kg) of weakfish will be landed as incidental catch and counted towards the annual fishing mortality targets instead of being discarded dead. The alternatives are based on the best scientific information available (NS 2), provide for management of weakfish throughout its range (NS 3) and do not discriminate against fishermen in any state (NS 4). The action would result in an increase in the efficiency in utilizing the resource by allowing an additional 150 lb (67 kg) per trip to be landed as incidental catch (NS 5). The preferred alternative takes into account variations that may occur in the fishery and fishery resource through support of the effective implementation of Amendment 4 and allows some discretion at the state level through adaptive management to accommodate monitoring, and regulations (NS 6). In addition, NOAA Fisheries considered the costs and benefits of the management measures economically and socially under NS 7 and 8 in Sections 4, 5, and 6 of this document. The action would allow affected vessels to land, rather than discard dead, 150 lb (67 kg) more of incidental weakfish catch per trip, thereby reducing bycatch. NOAA Fisheries has also considered the impact of this action on protected species (NS 9). Finally, this action would not require fishermen to fish in an unsafe manner (NS 10).

10.2 Paperwork Reduction Act

This action does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

10.3 State Jurisdiction Pertaining to Atlantic Coastal Act

The responsibilities of the Commission and NOAA Fisheries, under the Atlantic Coastal Act, are described in Section 1.1 of this document. NOAA Fisheries' primary responsibilities are to support the management actions of the Commission (15 Atlantic Coast member states), as

appropriate, and to develop regulations that are compatible with the effective implementation of Commission Interstate Fishery Management Plans. Therefore, the Atlantic Coast states as a collective body have the lead. The Commission includes in the development of its fishery management plans, amendments, and addendum, a section titled “Recommendations to the Secretaries for Complementary Actions in Federal Jurisdictions.” These documents are reviewed by the public before being approved by the Commission and implemented by the states. The Commission then provides recommendations to the Secretary on EEZ regulations it feels are compatible with the effective implementation of the Commission Interstate Fishery Management Plan. The importance of state regulations is acknowledged in Federal regulations at 50 CFR part 697.3(c), which states - “The regulations in this part do not preempt more restrictive state laws, or state enforcement of more restrictive state laws, with respect to weakfish fishing and American lobster fishing.”, and is compatible with the intent of this recommendation. If a state has a regulation that is more restrictive than the Federal regulation in the EEZ, the state law prevails in state waters and upon landing in that state.

10.4 Federalism

This rule does not contain policies with federalism implications under E.O. 13132.

11.0 CONSIDERATION OF NOAA AND CEQ SIGNIFICANT IMPACT CRITERIA

NOAA Administrative Order 216-6 (NAO 216-6) identifies nine criteria, in addition to the Council on Environmental Quality’s (CEQ) regulations at 40 C.F.R. § 1508.27, for determining the significance of the impacts of an action for purposes of NEPA. For the EA in this document, the NAO 216-6 and CEQ criteria are addressed as follows:

1. *Can the action be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action?*

The action is not expected to jeopardize the sustainability of any target species, since the action is intended to convert a portion of expected bycatch of non-target species, to landings. The action is not expected to result in a change to fishing practices or fishing effort, but will add to the weakfish landings and decrease dead discards (bycatch).

2. *Can the action be reasonably expected to jeopardize the sustainability of any non-target species?*

See answer to # 1 above. In addition, because the action will not result in a change in fishing effort or practices, NOAA Fisheries does not expect that sustainability of the weakfish stock will be jeopardized by the action.

3. *Can the action be reasonably expected to allow substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-Stevens Act and identified in FMPs?*

Because this action is not expected to change fishing practices or effort, it is not expected to change the impact on EFH or to allow substantial damage to ocean and coastal habitats and/or EFH, adversely affect entities listed in or eligible for listing in the National Register of Historic Places, or cause loss/destruction of significant scientific, cultural, or historic resources.

4. *Can the action be reasonably expected to have a substantial adverse impact on public health and safety?*

The action is not expected to have substantial adverse impacts on public health and safety.

5. *Can the action be reasonably expected to have an adverse impact on endangered or threatened species, marine mammals, or critical habitat of these species?*

The action is not expected to alter fishing practices or fishing effort and will have no impacts not previously considered on endangered or threatened species, marine mammals, or critical habitat of these species. While the action would increase the amount of incidental catch of weakfish allowed, it will not result in increased fishing effort or changes in fishing practices. Thus, no increased interactions with or impacts to critical habitat of sea turtles or other protected species is anticipated.

6. *Can the action be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?*

The action is not expected to result in cumulative adverse effects that could have a substantial effect on target species or non-target species. There will be no effect on the non-target species since an additional 150 lb (67 kg) of bycatch, previously discarded dead, will now be allowed to be landed.

7. *Can the action be reasonably expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?*

The action is not expected to change fishing activity or practices, landings of target species, interactions with non-target and endangered or threatened species, result in introduction/spread of nonindigenous species, or have a substantial impact on biodiversity and ecosystem function within the affected area.

8. *Are significant social or economic impacts interrelated with significant natural or physical environmental effects?*

The action is not expected to have any significant social or economic impacts, nor any significant impacts to the natural environment. Therefore, there are no significant direct, indirect or cumulative impacts. There would be a slight increase of weakfish landings, which were previously discarded dead.

9. *To what degree are the effects on the quality of the human environment expected to be highly controversial?*

The action would not result in changes in fishing activity, effort, or significantly increase landings, and would have no significant ecological, economic, or social impacts. There are no effects on the human environment that are highly controversial or uncertain or that involve unique or unknown risks. The action does not set any new precedence, but it does strengthen State regulations by allowing a more restrictive State regulation to take precedence over a Federal EEZ regulation once the vessel is in State waters and upon landing.

12.0 LIST OF PREPARERS

This document was prepared by Tom Meyer and Anne Lange of the Office of Sustainable Fisheries, State-Federal Fisheries Division, NOAA Fisheries, Silver Spring Maryland, assisted by individuals in the NOAA Fisheries Northeast Regional Office and Science Center.

13.0 LIST OF AGENCIES AND PERSONS CONSULTED

The following agencies and organizations were consulted during the development of the proposed action: Atlantic States Marine Fisheries Commission (and its member states), New England Fishery Management Council, Mid-Atlantic Fishery Management Council, South Atlantic Fishery Management Council, and U.S. Fish and Wildlife Service.

14.0 REFERENCES

Atlantic States Marine Fisheries Commission. Fishery Management Report No. 39 - Amendment 4 to the Interstate Fishery Management Plan for Weakfish, November 2002.

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National Marine Fisheries Service. Biological Opinion: Reinitiated Section 7 consultation on regulations for the Atlantic Coast Weakfish fishery in the Exclusive Economic Zone, June 27, 1997.

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15.0 APPENDIX

None